

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS PETILLO, JR.,  
Plaintiff,

v.

HELEN MONIQUE, et al.,  
Defendants.

No. 2:21-cv-01996-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and plaintiff has consented to have all matters in this action before a United States Magistrate Judge. See 28 U.S.C. § 636(c).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by

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the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

### **I. Screening Requirement**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

In order to avoid dismissal for failure to state a claim a complaint must contain more than "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

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## II. Allegations in the Complaint

Although plaintiff is confined at the California Medical Facility, the allegations in the complaint occurred at California State Prison-Sacramento. Plaintiff alleges that he is being subjected to mind control due to defendants' use of witchcraft 24 hours a day since 2010. While plaintiff identifies numerous individuals by name, he does not describe where or by whom these individuals are employed. Therefore, it is unclear to the court whether plaintiff is attempting to sue private individuals or state actors. By way of relief, plaintiff requests an investigation by the FBI, CIA, and the U.S. military as well as compensatory damages.

## III. Legal Standards

### A. State Actor Requirement

A plaintiff may bring an action under 42 U.S.C. § 1983 to redress violations of his "rights, privileges, or immunities secured by the Constitution and [federal] laws" by a person or entity, including a municipality, acting under the color of state law. 42 U.S.C. § 1983; Monell v. Dep't of Social Servs., 436 U.S. 658, 690-95 (1978); Awabdy v. City of Adelanto, 368 F.3d 1062, 1066 (9th Cir. 2004). To state a claim under 42 U.S.C. § 1983, a plaintiff must show (1) the defendant committed the alleged conduct while acting under color of state law; and (2) the plaintiff was deprived of a constitutional right as a result of the defendant's conduct. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). Thus, by definition, claims under section 1983 must involve a state actor acting under color of state law.

### B. Linkage Requirement

The civil rights statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit has held that "[a] person 'subjects' another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must

link each named defendant with some affirmative act or omission that demonstrates a violation of plaintiff's federal rights.

### C. Deliberate Indifference to a Serious Medical Need

Denial or delay of medical care for a prisoner's serious medical needs may constitute a violation of the prisoner's Eighth and Fourteenth Amendment rights. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). An individual is liable for such a violation only when the individual is deliberately indifferent to a prisoner's serious medical needs. Id.; see Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000).

In the Ninth Circuit, the test for deliberate indifference consists of two parts. Jett, 439 F.3d at 1096, citing McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1991), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the plaintiff must show a "serious medical need" by demonstrating that "failure to treat a prisoner's condition could result in further significant injury or the 'unnecessary and wanton infliction of pain.'" Id., citing Estelle, 429 U.S. at 104. "Examples of serious medical needs include '[t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain.'" Lopez, 203 F. 3d at 1131-1132, citing McGuckin, 974 F.2d at 1059-60.

Second, the plaintiff must show the defendant's response to the need was deliberately indifferent. Jett, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the indifference. Id. Under this standard, the prison official must not only "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists," but that person "must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). This "subjective approach" focuses only "on what a defendant's mental attitude actually was." Id. at 839. A showing of merely negligent medical care is not enough to establish a constitutional violation. Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998), citing Estelle, 429 U.S. at 105-106. A

1 difference of opinion about the proper course of treatment is not deliberate indifference, nor does  
 2 a dispute between a prisoner and prison officials over the necessity for or extent of medical  
 3 treatment amount to a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058  
 4 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Furthermore, mere delay of  
 5 medical treatment, “without more, is insufficient to state a claim of deliberate medical  
 6 indifference.” Shapley v. Nev. Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985).  
 7 Where a prisoner alleges that delay of medical treatment evinces deliberate indifference, the  
 8 prisoner must show that the delay caused “significant harm and that Defendants should have  
 9 known this to be the case.” Hallett, 296 F.3d at 745-46; see McGuckin, 974 F.2d at 1060.

10 The deliberate indifference standard of Estelle also applies in cases involving the  
 11 adequacy of mental health care in prisons. Doty v. County of Lassen, 37 F.2d 540, 546 (9th Cir.  
 12 1994); Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). To establish unconstitutional  
 13 treatment of a mental health condition, “a prisoner must show deliberate indifference to a  
 14 ‘serious’ medical need.” Doty at 546 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir.  
 15 1991)). A medical need is “serious if the failure to treat a prisoner’s condition could result in  
 16 further significant injury or the ‘unnecessary and wanton infliction of pain.’” Doty at 546  
 17 (quoting McGuckin at 1059). The “‘routine discomfort’ that results from incarceration” is not a  
 18 serious medical need. Id.

#### 19 **IV. Analysis**

20 The court finds the allegations in plaintiff’s complaint so vague and conclusory that it fails  
 21 to state a claim upon which relief can be granted. Although the Federal Rules of Civil Procedure  
 22 adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the  
 23 claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir.  
 24 1984). Plaintiff must allege with at least some degree of particularity overt acts which defendants  
 25 engaged in that support plaintiff’s claim. Id. For all these reasons, plaintiff’s complaint must be  
 26 dismissed. The court will, however, grant leave to file an amended complaint.

27 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
 28 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.

1 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in  
 2 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.  
 3 § 1983 unless there is some affirmative link or connection between a defendant's actions and the  
 4 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory  
 5 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of  
 6 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

7 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to  
 8 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended  
 9 complaint be complete in itself without reference to any prior pleading. This is because, as a  
 10 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
 11 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
 12 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
 13 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

#### 14 **V. Plain Language Summary for Pro Se Party**

15 The following information is meant to explain this order in plain English and is not  
 16 intended as legal advice.

17 The court has reviewed the allegations in your complaint and determined that they do not  
 18 state any claim against the defendants. Your complaint is being dismissed, but you are being  
 19 given the chance to fix the problems identified in this screening order.

20 Although you are not required to do so, you may file an amended complaint within 30  
 21 days from the date of this order. If you choose to file an amended complaint, pay particular  
 22 attention to the legal standards identified in this order which may apply to your claims.

23 In accordance with the above, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is granted.
- 25 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
- 26 shall be collected and paid in accordance with this court's order to the Director of the California
- 27 Department of Corrections and Rehabilitation filed concurrently herewith.
- 28 3. Plaintiff's complaint is dismissed.

1 4. Plaintiff is granted thirty days from the date of service of this order to file an amended  
2 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
3 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket  
4 number assigned this case and must be labeled "Amended Complaint." Failure to file an  
5 amended complaint in accordance with this order will result in a recommendation that this action  
6 be dismissed.

7 Dated: January 25, 2022



CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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